



April 27, 2001

Captain John Bruce
City of Frisco Police Department
P.O. Drawer 1100
8750 McKinney Road, Suite 300
Frisco, Texas 75034

OR2001-1736

Dear Captain Bruce:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 146509.

The City of Frisco Police Department (the "department") received a request for a particular police report. The submitted documents indicate that the department has released some of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the submitted information.

Section 552.103 of the Government Code, the "litigation exception," provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documentation sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To sustain its burden, the governmental body must demonstrate: (1) that litigation is pending or reasonably anticipated on the date that the governmental body receives the request for information and (2) that the information in question is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

You represent to this office that the information at issue relates to anticipated criminal litigation "to which the state is a party." You do not inform us, however, that the department will be a party to the anticipated litigation. Consequently, you may not withhold the requested information under section 552.103. *See* Gov't Code § 552.103(a); Open Records Decision No. 392 at 3 (1983) (stating that litigation exception is applicable only where the litigation involves or is expected to involve the governmental body claiming the exception).

You also raise section 552.108, the "law enforcement exception," which provides that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). This office has concluded that section 552.108 protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding a police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment), 127 (1976) (list of persons who entered or left Governor's Mansion).

In this instance, you assert only that the information at issue is "maintained for internal use in matters relating to law enforcement and prosecution" and that "[t]he release of these documents would interfere with the detection, investigation and prosecution of crime." We have carefully reviewed the information and have considered the department's position. But we conclude that you have not demonstrated that the information at issue may be withheld from disclosure under section 552.108. *See also* Open Records Decision No. 636 at 4 (1995) (stating that information relating to generally-known policies and techniques may not be withheld under section 552.108).

We note, however, that the requested information includes a Texas license plate number. Section 552.130 of the Government Code excepts from disclosure “a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(2). Ordinarily, a Texas license plate number must be withheld under section 552.130(a)(2). But in this instance, the license plate number in question is that of the vehicle that the arrested individual was driving. The requestor states that she is acting on behalf of the arrested individual. The arrested individual indicates that the requestor is in fact his authorized representative. Therefore, the requestor may have a special right of access to the license plate number under section 552.023(a) of the Government Code.¹ If the license plate number is that of a vehicle that is registered to the arrested individual, and if the requestor is that individual’s authorized representative, then the requestor has a right of access to the license plate number under section 552.023(a). If not, then the license plate number is excepted from disclosure under section 552.130.

In summary, the department may not withhold the requested information under section 552.103 or under section 552.108. Unless the requestor has a special right of access to the Texas license plate number contained in the information, the license plate number is excepted from disclosure under section 552.130. With that possible exception, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

¹Section 552.023(a) provides that “[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”

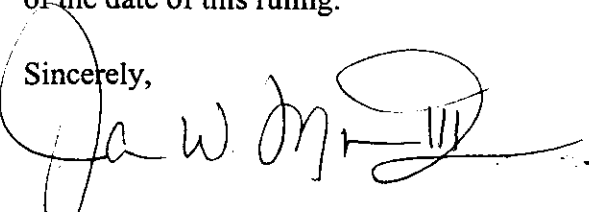
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rr

Ref: ID# 146509

Encl: Submitted documents

cc: Ms. Kimberly Patterson-Chappell
c/o Captain John Bruce
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(w/o enclosures)